# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr.A No.200 of 1993**

**Decided on : November 20, 2007**

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**State of H.P.** **…Appellant.**

**Versus**

**Brij Nandan and another** **…Respondents.**

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***Coram***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

**The Hon'ble Mr. Justice Surinder Singh, Judge.**

**Whether approved for reporting?**

**For the Appellant : Mr. D.S. Nainta, Deputy Advocate General.**

**For the Respondents : Mr. Bhupender Gupta, Senior Advocate, with Mr. Janesh Gupta, Advocate.**

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**Surjit Singh, Judge( Oral )**

State has filed this appeal against the judgment of the trial Magistrate whereby the respondents, who were tried for offences punishable, under Sections 409, 218 and 120-B IPC, for allegedly conspiring to misappropriate explosive material of the PWD Sub Division store, Bhuntar, and in furtherance of the said conspiracy misappropriating huge quantity of gelatine and detonators and also preparing false record showing the consumption of the misappropriated quantity of the explosive, have been acquitted.

***2.*** First, the facts may be noticed. Punjab Police arrested two persons by the names of Kuldip Singh and Balram Singh sometime in the month of April, 1985, and recovered from them 48 kgs. of gelatine. The said two persons were allegedly terrorists. They, during the course of investigation, disclosed that the gelatine had been procured by them from respondent No.1 Brij Nandan employed as a

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**Whether reporters of the local papers may be allowed to see the judgment?**

Junior Engineer in Division No.1, H.P. P.W.D., Kullu. Intimation was sent to Himachal Police about the disclosure made by said Kuldip Singh and Balram Singh. A CID Inspector, namely Gurdit Singh (PW-12), rushed to the store under the charge of respondent No.1 Brij Nandan and carried out physical verification of the explosives. He found that, as per M.A.S. register maintained by respondent No.1, he was supposed to be having 265.5 kgs. of gelatine and 216 detonators, as on 30.4.1985, but only 100 kgs. of gelatine, contained in four cases, was found in the store. With respect to the remaining 165.5 kgs. of gelatine and 216 detonators, he (respondent No.1) stated that the same had been taken to the work sites and the most of the gelatine and all the detonators had been used in executing the work of construction of road. A note-book was found with respondent No.2 Riptu Chand, who was working as work supervisor with respondent No.1, in which there were entries with regard to the consumption of gelatine and detonators, which were found short on physical verification of the store. The Investigating Officer found that the entries in the said note-book were bogus and had been made by respondent No.2 at the instance of respondent No.1, with a view to creating false evidence of consumption.

***3.*** Trial Court charged the respondents with the offences punishable under Sections 409, 218 and 120-B IPC and tried them for the said offences when they pleaded not guilty. At the end of the trial, it was held that the evidence on record did not substantiate the charge and the respondents were, therefore, acquitted.

***4.*** We have heard the learned Deputy Advocate General and gone through the record.

***5.*** It may be stated at the very outset that Kuldip Singh and Balram Singh, who allegedly named respondent No.1 as the source of procurement of gelatine recovered from them, were discharged by the concerned Sessions Court of Punjab State, that is to say that they were not even put on trial. The fact finds mention in the judgment of the trial Court and has not been disputed by the learned Deputy Advocate General. It is the prosecution's own case that there were entries in a note-book in the hand of respondent No.2 showing the consumption of the quantity of gelatine and detonators, which were found short at the time of physical verification of the store under the charge of respondent No.1. The entries in the said note-book are stated to be bogus. To prove the said entries to be bogus, the prosecution was required to lead evidence that the gelatine and the detonators shown to have been consumed, in the note-book, had in fact not been so consumed. This they could have done by leading the evidence that the work executed by respondents No.1 and 2, after the issue of the aforesaid quantity of gelatine and detonators, did not require use of the said explosives for blasting hard rocks. No such evidence was led.

***6.*** In view of the abovestated position, we see no reason for interfering with the judgment of the trial Magistrate, which is based on proper appreciation of the evidence. Consequently, the appeal is dismissed.

**( Surjit Singh ), J**

**November 20, 2007**(sd) **( Surinder Singh ), J**